IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9225 OF 2005

Bhagwantrao Anandrao Desai Petitioner

versus

The Chairman, Satara Jillha Parishad Sahakari Malki Grih Nirman Sanstha Maryadit, Khed (Sangamnagar) and another Respondents

Shri A.J.Kenjale for petitioner.

Shri R.V.Morey for respondent no.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 27th January 2006

PC :

1. This writ petition under Article 227 of the Constitution of India is directed against an order (Exhibit-H, Page 64) below Exhibit-103 in Special Darkhast No.44 of 2001. By the order under challenge the application of the petitioner, who is Judgement Debtor no.1, is rejected by the Executing Court.

2. The contentions raised by Shri Godbole are these. His first contention is that the dispute

which resulted in the subject decree and which was being executed by respondent no.1 society, is essentially for recovery of money. The relief of possession is alternate to recovery of money. The petitioner has satisfied the decree inasmuch the entire amount claimed in the dispute, has been deposited/paid on 12th September 2005. Inviting my attention to pages 30 and 31 i.e. Exhibits A and B of this petition, it is contended by Shri Godbole that amount being paid, it is not necessary to proceed in execution and recover possession of plot no.32, which is allotted by first respondent society.

3. His second contention is that the decree which directs payment of money and in default, permits the decree holder to proceed against immovable property, is penal in nature and consequences. The rigour of such decree being a known concept in law, the Court including the Executing Court has sufficient power to enlarge time for deposit or payment. He refers to Section 148 of Code of Civil Procedure, 1908 and a decision of Hon’ble Supreme Court reported in AIR-1983-SC-428 (Smt.Periyakkal and others Vs. Smt. Dakshyani) and followed subsequently.

4. I am unable to accept either of the contentions. It is too late in the day to contend that the decree is only for payment of money and therefore, immovable property cannot be proceeded with in execution. The order of the Judge, Co-operative Court passed on 30th March 1981 reads thus :-

ORDER

> The disputant shall recover a sum of Rs.32333.75 ps. along with future interest at 15% from 14.9.1977 on Rs.23384.00 till 30.4.1981, from the opponent no.1 only. If the opponent no.1 fails to pay the whole amount up to 30.4.1981 then the disputant shall take over the possession of plot no.32 and the building there upon from the costs of the disputant and the opponents to bear their own."

5. From a bare reading of this order it is abundantly clear that if there is failure to pay the entire amount within the time stipulated i.e. 30th April 1981, then the petitioner can be dispossessed from the subject plot by the decree holder. That is the mode in which assistance of the Executing Court is sought. Shri Godbole does not dispute that the award of the Co-operative Court is executable and enforceable by a Civil Court as if it is a decree passed by it. Once

the mode known by law for execution of money decree in case the amount is not paid, has been adopted by the Decree Holder and that the petitioner does not dispute that the amount is not paid within the time stipulated, then it is futile to contend now in 2005 that the nature of decree is essentially a direction to pay money.

6. The second contention of Shri Godbole need not detain me at all. That the decree or any stipulation therein is penal in nature and therefore the Court should protect the party (judgement debtor) from rigour of the same in exercise of it's powers u/s 148 of CPS, is something which is neither set out in the application (Exhibit-103) nor is urged before the Executing Court. Once the foundation has not been laid and necessary material not placed before the Executing Court, allowing Shri Godbole to make such a submission for the first time in this Court, is impermissible. That apart, my attention has been invited to various orders passed by this Court upon writ petitions which were filed by the second respondent and more particularly challenging the order passed by learned Single Judge of this Court in Writ Petition No.47 of 1984. The petitioner in this

petition was a party respondent to that petition. He has specifically stated on affidavit during the course of hearing of the petition that he was unable to pay the loan instalments and hence the plot and bungalow should be taken over by the society. The second respondent tried to assist the petitioner at that time but that was not accepted by the decree holder. Thereafter, the son of the petitioner Mahendra Desai was sought to be put up as an obstructor and his petition was also rejected by the Executing Court and this Court in Writ Petition No.3015 of 2005.

7. Writ jurisdiction is not to be utilised to assist a dishonest person like petitioner who is trying to obstruct execution of a decree which is passed decades back. The very purpose of executing a decree for possession by assisting the decree holder would be defeated if such a frivolous petition is entertained. The petitioner had raised all possible contentions including estoppel and waiver on the part of decree holder. Theyhave not been substantiated in the Court below and rightly not pressed before me. The above contentions were only pressed before me. There is no substance in the same. The petitioner and respondent no.2 have thwarted

all attempts of execution of the decree passed in favour of respondent no.1. This is the third round of litigation.

8. Petition dismissed with costs quantified at Rs.10,000/- to be paid to the respondent no.1 decree holder.

(S.C.DHARMADHIKARI, J.)